



COMMONWEALTH of VIRGINIA

DEPARTMENT OF EDUCATION

**P.O. BOX 2120
RICHMOND 23218-2120**

January 11, 2000

**Ms. Cheryl Parrino
CEO Universal Service Administrative Company
C/O 2120 L St., NW, Suite 600
Washington, DC 20037**

Dear Ms. Parrino:

The Virginia Department of Education was denied discount funding for year two satellite services by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company. The Department's 471 application number is 0000134685 and funding request number is 0000213047.

The Department has submitted an appeal to SLD to fund our application. While that appeal is pending, we feel it prudent to begin gathering information for a final appeal before the Federal Communications Commission, should the need arise.

Please provide the following information to assist the Department with its appeal and also instruct the SLD not to issue a negative ruling on the Department's appeal until the requested information has been provided.

Information requested of USAC/SLD:

- A list of all companies USAC determined to have improperly received support for telecommunications services under the Schools and Libraries program, as indicated by an October 8, 1999 letter from D. Scott Barash to Magalie Roman Salas, and dates of those determinations.**
- Copies of all communication to and from Autotote Communications, SPIN 143013740 and USAC/SLD between January 1, 1998 and present,**
- Copies of all SLD documentation concerning the Department's above application,**
- The policy manual used by Program Integrity Assurance for evaluation of year two applications and year one applications,**

Ms. Parrino
January 11, 2000
Page 2

- Criteria USAC/SLD used between April 6, 1999 and December 22, 1999 to determine which companies were eligible for telecommunications service support for the Schools and Libraries program during the period, including information required on Forms 498 and 457, and
- A list of Principal Communications Business Codes required on line three of form 498 which would exclude companies from receiving telecommunications service support from USAC under the Schools and Libraries program and rationale.

We believe the above information is vital to establishing a logical and thorough appeal to the Federal Communications Commission (FCC). Because FCC regulations require appeals to be filed within 30 days of issuance of a decision by SLD, we feel that the above requested information must be in hand at the Department before a decision is rendered on our appeal by SLD.

Please send the information to:

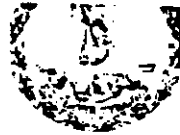
Greg Weisiger
Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 23218

Thank you for your prompt attention to this matter.

Sincerely,


Greg Weisiger
Virginia Department of Education

CC. Lan Neugent
Kate Moore
SLD Board



COMMONWEALTH of VIRGINIA

DEPARTMENT OF EDUCATION

P.O. BOX 2120
RICHMOND 23218-2120

December 22, 1999

Letter of Appeal
Schools and Libraries Division
Box 125
Correspondence Unit
100 South Jefferson Road
Whippany, NJ 07981

Dear SLD:

This letter is to appeal your December 14, 1999, denial of funding for the Virginia Department of Education:

Form 471 Application Number: 134685
Billed Entity Number: 126512
Funding Request Number: 000213047
SPIN: 143013740, Autotote Communications

The Department's application for discounts on satellite transponder lease was denied by SLD because "This FRN is a request for Telecommunications Service from a provider which is not a telecommunications common carrier service provider." Autotote Communications is a provider of telecommunications on a common carrier basis.

Federal Communication Commission regulations governing the Universal Service program offer the following definitions of "telecommunications" and "telecommunications carrier" under CFR 47 Part 54 Section 54.1:

Telecommunications. "Telecommunications" is the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Telecommunications carrier. A "telecommunications carrier" is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services as defined in section 226 of the Act. A telecommunications carrier shall be treated as a common carrier under the Act only to the extent that it is engaged in

Virginia Department of Education Letter of Appeal
Page 2

providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage. This definition includes cellular mobile radio service (CMRS) providers, interexchange carriers (IXCs) and, to the extent they are acting as telecommunications carriers, companies that provide both telecommunications and information services. Private mobile radio service (PMRS) providers are telecommunications carriers to the extent they provide domestic or international telecommunications for a fee directly to the public.

Commission regulations governing allowable services eligible for Universal Service discounts are covered under CFR 47 Part 54 Section 54.502:

For purposes of this subpart, supported telecommunications services provided by telecommunications carriers include all commercially available telecommunications services in addition to all reasonable charges that are incurred by taking such services, such as state and federal taxes. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms.

Autotote Communications leases satellite transponder space segment directly to the public, and advertises availability of their services in national trade publications (Attachment 1). Tony Verzello, also in Attachment 1, is an employee of Autotote Communications and is responsible for leasing of Autotote transponder time to the public.

The Department, through an IFB from the Department of Information Technology (DIT), requested bids for telecommunications services during the 1999 - 2000 funding cycle. In the IFB (Attachment 2), DIT specified that vendors "...must be qualified 'Common Carriers' as defined by the Federal Communications Commission."

Because Autotote does, in fact, offer telecommunications services on a common carrier basis, offered the lowest price, agreed to participate in the E-Rate program, and had provided service to the Department in the past, Autotote was selected as vendor for the period July 1, 1999 through June 30 2000.

The Department also had very little concern regarding the status of Autotote as a common carrier because the Schools and Libraries Corporation approved discounts to the Department for services provided by Autotote between January 1, 1998 and June 30, 1998, of the first funding year.

Had the Department known that Autotote was not a common carrier as defined by SLD at the time bids were accepted, Autotote's bid certainly would have been rejected and the secondary bidder, Spaceconnection, would have been accepted.

Virginia Department of Education Letter of Appeal
Page 3

However, based on previous experience with the E-rate program, the Department had no way of knowing that Autotote's status at SLD had changed and therefore accepted their bid.

The Department contends that Autotote is a telecommunications carrier and does offer telecommunications services on a common carrier basis. The SLD denial letter contained no evidence to contradict the fact that Autotote offers services in accordance with CFR 47 Part 54 Section 54.1 or 54.502, and provided herein. Therefore, we ask that this denial be reconsidered and discount funding granted.

Please contact Greg Weisiger, E-Rate coordinator, at (804) 692-0335, for additional information on this appeal.

Sincerely,

Lan Neugent
Assistant Superintendent for Technology



COMMONWEALTH of VIRGINIA

DEPARTMENT OF EDUCATION

P.O. BOX 2120
RICHMOND 23218-2120

May 10, 2000

Schools and Libraries Division
Letter of Appeal
Box 125 - Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

Dear Sir or Madam:

This letter is to inform you that the Virginia Department of Education wishes to appeal your decision for Funding Request Number 344585, Form 471 Application Number 163045, Entity Number 126512. Funding was denied for telecommunications service because SLD believes "This FRN is a request for Telecommunications Service from a provider which is not a telecommunications carrier service provider."

In consideration of the Joplin, MO decision remanded to SLD December 14, 1999, and subsequent SLD decision to fund the Joplin E-Rate application, we ask that SLD review this decision in the same context as Joplin, as the DOE application is essentially identical to the Joplin appeal of February 26, 1999.

The Department also has an appeal pending for year two funding, and is awaiting supporting documentation from SLD. This appeal will have material impact on the SLD year three denial cited above.

Please direct any questions to Greg Weisiger at (804) 692-0335 or email gweisige@pen.k12.va.us.

Sincerely,


Ian Neugent
Assistant Superintendent for Technology

LWN/emt



Schools and Libraries 471 PIA Review Contact Report

Applicant: VIRGINIA STATE DEPARTMENT OF EDUCATION

Application Number: 163045

| Contact Date/Time | In | Out | Contact Type | Contact Status | Response Due | PIA Rep |
|--|--------------------------|-------------------------------------|--------------|----------------|--------------|---------|
| 03/27/2000 9:28:40 AM | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Phone | Contacted | | RPATEL |
| Informed applicant that documentation validating the Telcom provider was not being sent by the ISP contact (Kevin Mulhara). Informed applicant that there is a risk that the application will not be processed as the ISP contact is difficult to contact and unhelpful. | | | | | | |
| 03/27/2000 9:28:41 AM | <input type="checkbox"/> | <input type="checkbox"/> | Phone | Contacted | | RPATEL |
| 4/08/2000 11:33:04 AM | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Phone | Unavailable | | RPATEL |
| Tried to contact the service provider. | | | | | | |
| 4/08/2000 11:38:55 AM | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Phone | Contacted | | RPATEL |
| contacted Kevin @212-754-2233 He was busy and told me he would call back Friday from out of town. | | | | | | |
| 04/13/2000 8:09:08 AM | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Phone | Contacted | | RPATEL |
| tried to contact three people at autotote all numbers that previously worked are no longer working HQ 212-754-2200 President Bob Patterson 818-754-1100 Kevin Mulhar Contact person 212-318-9147 I will also e-mail this info to the Applicant. | | | | | | |
| 04/13/2000 8:20:50 AM | <input type="checkbox"/> | <input checked="" type="checkbox"/> | E-mail | Contacted | | RPATEL |

Before the
Federal Communications Commission
Washington, DC 20554

| | | |
|---|---|---------------------|
| In the Matter of |) | |
| |) | |
| Request for Review of the |) | |
| Decision of the |) | |
| Universal Service Administrator by |) | |
| |) | |
| Virginia State Department of Education |) | File No. SLD-163045 |
| Richmond, Virginia |) | |
| |) | |
| Federal-State Joint Board on |) | CC Docket No. 96-45 |
| Universal Service |) | |
| |) | |
| Changes to the Board of Directors of the |) | CC Docket No. 97-21 |
| National Exchange Carrier Association, Inc. |) | |

ORDER

Adopted: May 10, 2002

Released: May 13, 2002

By the Wireline Competition Bureau:

1. The Wireline Competition Bureau has under consideration a Request for Review filed by the Virginia State Department of Education (Virginia DOE), Richmond, Virginia.¹ Virginia DOE seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) relating to Virginia DOE's application for discounts under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny the Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ The Communications Act permits only "telecommunications carriers" to receive direct reimbursement under the universal service support mechanisms for the provision of discounted telecommunications services.⁴ The term "telecommunications carrier" includes only carriers that

Request for Review of the Decision of the Universal Service Administrator by Virginia State Department of Education, CC Docket Nos. 96-45 and 97-21, Request for Review, filed April 16, 2001 (Request for Review).

² Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

⁴ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9005-23, 9084-90 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*,

offer telecommunications on a common carrier basis.⁵ The Commission stated in the *Universal Service Order* that a carrier may be a common carrier if it holds itself out "to service indifferently to all potential users," but a "carrier will not be a common carrier 'where its practice is to make individualized decisions in particular cases whether and on what terms to serve.'"⁶

3. Under SLD procedures, certain categories of service providers are automatically considered to be eligible telecommunications carriers. Included in this list are incumbent local exchange carriers (ILECs), competitive access providers/competitive local exchange carriers (CAP/CLECs), and interexchange carriers (IXCs) because they are widely acknowledged to be types of service providers that provide telecommunications services on a common carrier basis. Under program procedures, however, even if a service provider self-designates one of these categories, the presumption that they provide service on a common carriage basis remains subject to verification by SLD. If a service provider selects another category listed on the Form 498, such as "PRIV," SLD will investigate in order to determine whether the service provider offers their services on a common carriage basis. Specifically, SLD looks to whether the relevant state regulatory agency has so classified the provider and whether the provider advertises services as a common carrier. If SLD is unable to confirm that the service provider is an eligible telecommunications carrier based on its own inquiry, SLD will ask the service provider to provide information either confirming or denying that it provides telecommunications services on a common carrier basis.

4. In its application, Virginia DOE requested discounts for telecommunications services from Autotote Communications (Autotote), a publicly-held business specializing in telecommunications services for the racing industry and lottery organizations.⁷ Specifically, Autotote was to provide Virginia DOE with satellite connections for video distance learning.⁸ By letter dated May 5, 2000, SLD denied the request, finding that Virginia DOE requested

CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000); *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5413-14 (1997) (*Fourth Reconsideration Order*).

⁵ *Universal Service Order*, 12 FCC Rcd at 9177-78; *Fourth Reconsideration Order*, 13 FCC Rcd at 5413-14.

⁶ *Universal Service Order*, 12 FCC Rcd at 9177-78 (citing *National Association of Regulatory Utility Commissioners v. FCC*, 533 F.2d 601, 608 (D.C. 1976) (NARUC II)).

⁷ FCC Form 471, Virginia State Department of Education, filed January 17, 2000.

⁸ *Id.*

discounts for telecommunications service from a provider that is not a telecommunications common carrier.⁹

5. Virginia DOE appealed SLD's decision by a letter dated May 10, 2000.¹⁰ On May 10, 2001, SLD affirmed its initial funding decision and denied Virginia DOE's appeal.¹¹ The Administrator's Decision on Appeal explained that the services at issue were to be provided by a service provider that was not eligible to receive universal service support because it did not provide telecommunications services on a common carrier basis.¹² Virginia DOE appeals now this decision, seeking a decision that Autotote is a telecommunications carrier.¹³

6. In the instant Request for Review, Virginia DOE first contends that Autotote is a telecommunications carrier. In support, of this assertion Virginia DOE makes reference to advertisements in trade publications that it claims establish that Autotote sells satellite capacity to the public on a non-discriminatory basis.¹⁴ Virginia DOE also compares the facts relating to its Request for Review to those in a previous appeal before the Commission, *Joplin*.¹⁵ According to Virginia DOE, SLD incorrectly found that Autotote was not an eligible service provider based on Autotote's response on the Service Provider Information Form (Form 498).¹⁶ Specifically, Virginia DOE contends that if the instructions for the Form 498 had been more explicit, Autotote would have classified itself as a common carrier.¹⁷

7. Based on our review of the record, we affirm SLD's determination that Autotote is not a "telecommunications carrier" eligible for universal service support. According to the contract for services, Virginia DOE contracted with Autotote for satellite transponder time.¹⁸ The Commission has determined that companies that simply lease transponder capacity on satellites are not providers of telecommunications services.¹⁹ The Commission found that, in these situations, the satellite is being leased as a midpoint or switch to another

⁹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Greg Weisiger, Virginia State Department of Education, dated May 5, 2000.

¹⁰ Letter from Lan Neugent, Virginia State Department of Education to Schools and Libraries Division, Universal Service Administrative Company, filed May 12, 2000 (SLD Appeal Letter).

¹¹ Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lan Neugent, Virginia State Department of Education, dated March 30, 2001.

¹² *Id.*

¹³ Request for Review at 1.

¹⁴ Request for Review at 3-4.

¹⁵ Request for Review at 2.

¹⁶ *Id.* See also Universal Service Administrative Company Service Provider Information Form, OMB 3060-0824 (September 1998) (Form 498).

¹⁷ Request for Review at 2.

¹⁸ See Request for Review.

¹⁹ *Fourth Reconsideration Order*, 13 FCC Rcd at 5477-5479.

telecommunications company which, in turn, uses its own earth-stations to provide end-to-end communications.²⁰ The Commission therefore concluded that because satellite providers do not transmit information when they lease bare transponder capacity, they do not provide telecommunications services.²¹

8. In addition, we are not persuaded by Virginia DOE's assertion that confusion relating to the appropriate characterization of Autotote's principal line of business on the Form 498 resulted in Autotote being improperly classified.²² In Funding Year 3, SLD used the Form 498 to collect information from carriers and service providers participating in the schools and libraries and rural health care programs.²³ According to Virginia DOE, the Form 498 instructions are unclear and misleading for non-traditional communications providers.²⁴ Virginia DOE explains that if SLD or the FCC provided a list of which categories qualify as telecommunications common carriers, it would have been able to select the appropriate category of service.²⁵ Autotote designated "PRIV" as the descriptive category for its principal communications business on its Form 498.²⁶ "PRIV" is defined as a private service provider that offers excess capacity on a private system that is used primarily for internal purposes.²⁷ The record, however, reflects that SLD was unable to substantiate that Autotote was an eligible telecommunications carrier, regardless of the descriptive category on Autotote's Form 498. All of the information found on Autotote's website indicated that their primary business was not related to common carrier service.²⁸ In addition, Autotote has not been designated an eligible

²⁰ *Id.*

²¹ *Id.*

²² Request for Review at 2.

²³ Form 498.

²⁴ Request for Review at 2. See Instructions for Completing the Universal Service Administrative Company Service Provider Information Form (FCC Form 498), OMB 3060-0824 (September 1998) (Form 498 Instructions).

²⁵ Request for Review at 2-3.

²⁶ Request for Review at 2.

²⁷ Form 498 Instructions.

²⁸ See Autotote website, <www.autotote.com/AutototeCorp/> ("Our company was formed through the acquisition of Scientific Games Holdings, a well-known instant lottery ticket company, by Autotote Corporation, the leading pari-mutuel company in the world... Scientific Games Corporation is made up of four groups, a number of which are the leading competitors in their respective fields. Scientific Games International is the top integrated supplier of instant tickets, validation systems and facilities management services to lotteries. Autotote Systems is the largest supplier of wagering systems and services to racetracks and off-track facilities. Autotote Enterprises is a licensed pari-mutuel operator in Connecticut providing off-track venues for patrons to watch horse racing and/or place bets. The company is also a licensed pari-mutuel operator in Holland and Germany. Telecommunication products utilizes our instant ticket technology to produce prepaid wireless phone cards for major telecommunications companies."). See also Autotote Communications Services, <<http://www.autotote.com/AutototeCorp/parimutuel/communication.asp>> ("Autotote Communication Services (ACS), a division of Autotote Systems Inc, is the leading provider of simulcasting services in the United States of America, servicing over fifty tracks and broadcasting over 5,500 racing events each year.").

common carrier in the state of Virginia, and does not have an application pending.²⁹ When subsequently contacted by SLD, Autotote did not respond to SLD's repeated requests for information to validate the eligibility of their services.³⁰ Therefore, SLD was unable to verify that Autotote provided services on a common carrier basis, and appropriately determined that Autotote was not eligible to receive universal service support for telecommunications services.

9. In its appeal to the Commission, Virginia DOE also references advertisements in trade publications that it claims were enclosed in its appeal to SLD that would have established that Autotote sold satellite capacity to the public on a non-discriminatory basis.³¹ Virginia DOE did not produce copies of these publications in their appeal to the Commission and SLD has no record of these enclosures.³² We also note that Virginia DOE failed to reference such enclosures in its appeal letter to SLD.³³ We therefore find these assertions unpersuasive.

10. Finally, Virginia DOE compares the facts relating to their Request for Review to those in a previous appeal before the Bureau, *Joplin*.³⁴ As in the instant appeal, *Joplin* addressed the common carrier status of a service provider based on its Form 498.³⁵ In *Joplin*, the service provider initially characterized itself as a private service provider, but eventually revised the Form 498 to indicate that it was a non-traditional provider. In its appeal to SLD, *Joplin* provided evidence that the Missouri Public Service Commission had certified it as a common carrier.³⁶ Because of the conflicting evidence relating to the service provider's common carrier status, the Common Carrier Bureau remanded *Joplin* to SLD for further consideration.³⁷ Ultimately, SLD

²⁹ Request for Review at 3. Virginia DOE asserts that "because of the national reach of satellite communication, no state PUC certifies Autotote as a common carrier." Under program procedures, even if a service provider is not certified as a common carrier by a state commission, the service provider may still offer independent evidence to SLD that they provide services on a common carrier basis. See *supra* para. 3.

³⁰ The Program Integrity Assurance (PIA) unit contacted Autotote by phone on April 6, 2000 and was told that the contact was busy and would call PIA on April 7, 2000. There is no record that the representative returned the call. PIA attempted to contact Autotote, again, on April 13, 2000, but three of the contact phone numbers that previously worked were now out of service. On April 13, 2000, PIA e-mailed Autotote and requested documentation to validate their eligibility. Autotote did not respond. Prior to this, on March 27, 2000, PIA informed Virginia DOE that documentation validating the service provider did not appear to be forthcoming from Autotote, and that as a result, there was a risk the application would not be able to be processed. See PIA Review Contact Report, Virginia State Department of Education, Application No. 163045.

³¹ Request for Review at 3-4.

³² See Request for Review.

³³ See SLD Appeal Letter.

³⁴ Request for Review at 2.

³⁵ Request for Review by *Joplin R8 Schools District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-82921, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 3677 (Com. Car. Bur. 2000).

³⁶ *Id.*

³⁷ *Id.*

reversed its decision based in large part due to the fact that the Missouri Public Service Commission certified the service provider as a common carrier.³⁸

11. We emphasize that the ultimate question in *Joplin* and the instant appeal is whether, based on the evidence before the Commission, the service provider is an eligible telecommunications carrier. Virginia DOE's appeal is distinguishable from *Joplin* because in *Joplin*, there was conflicting evidence on the record relating to whether the service provider was a common carrier.³⁹ In the instant appeal, we have no such contradictory evidence before us.

12. Based on the Commission precedent concerning the leasing of satellite transponder time and the absence of information supporting Virginia DOE's contention that Autotote is an eligible telecommunications service provider, including Autotote's own unwillingness to substantiate its status, we affirm SLD's decision that Autotote does not provide telecommunications on a common carrier basis. Given the clear proscription of the *Universal Service Order* against funding telecommunications services provided by entities other than common carriers, it was Virginia DOE's responsibility to ensure that the service provider it had contracted with was indeed a designated telecommunications provider whose status could be appropriately substantiated.⁴⁰ Therefore, we find based on the record before us that Autotote is not eligible to receive direct support under the universal service support mechanism for providing telecommunications services to Virginia DOE.

13. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722 (a), that the Request for Review filed by the Virginia State Department of Education, Richmond, Virginia, on April 16, 2001 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Wireline Competition Bureau

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Universal Service Order*, 12 FCC Rcd at 9005-23, 9084-90.

RECEIVED

APR 16 2001

Before the
Federal Communications Commission
Washington, DC

FCC MAIL ROOM
In the Matter of:

DOCKET FILE COPY ORIGINAL

Request for Review of Decision of)
the Universal Service Fund Administrator by the)
Virginia Department of Education)
Richmond, Virginia)

Federal-State Joint Board on Universal Service) CC Docket No. 96-45

Changes to the Board of Directors of the) CC Docket No. 97-21
National Exchange Carrier Association, Inc.)

Re: Billed Entity Number: 126512
471 Application Number: 163045
Funding Request Number: 344585
SLD Correspondence: March 30, 2001

In accordance with Title 47, Chapter 1, Part 54, Section 54.722(b) of the Code of Federal Regulations, The Virginia Department of Education (DOE) submits an original and four copies of this Petition for Review of an Administrator Decision to the Common Carrier Bureau (CCB). In correspondence dated March 30, 2001 the Schools and Libraries Division (SLD) issued an Administrator's Decision on Appeal to DOE denying an appeal made by DOE of the above E-Rate funding request. The Department provides to the CCB additional facts in this case and requests that the CCB overturn SLD's decision.

Background

For E-Rate funding year three (2000-2001), DOE submitted an E-Rate

remanded the application to SLD with instructions to consider further Empire Electric's status as a telecommunications common carrier. In November 2000 the SLD announced at a public forum that Joplin had been granted funding, largely because it was certified as a telecommunications common carrier by the Missouri Public Service Commission. In the Joplin decision the FCC also indicated that companies that complete the FCC Form 498 listing their principal business as either "PRIV" or "NTP" would not be considered common carriers. Joplin was remanded because of conflicting evidence regarding Empire's status. Autotote, like Empire, listed its principal communications business on the Form 498 as "PRIV" but because of the national reach of satellite communication, no state PUC certifies Autotote as a common carrier. DOE believes the instructions for completing the Form 498 may mislead filers, particularly filers associated with companies providing telecommunications services other than traditional telephone service. On the Form 498 there are 20 categories filers may choose. Neither the SLD nor FCC have provided a list of which categories qualify as telecommunications common carriers, despite repeated requests for this information. The definition of "PRIV" is "Private Service Providers -- offers telecommunications to others for a fee. This would include a company that offers excess capacity on a private system that is used primarily for internal purposes." DOE contends that according to this definition, Autotote could still be considered a telecommunications common carrier. The satellite capacity Autotote sells outside its private use is offered to the public on a non-discriminatory basis. DOE included in its SLD appeal evidence that Autotote advertised its services in trade publications. It is not Autotote's "... practice ... to make individualized decisions,

in particular cases, whether and on what terms to deal..." Rather, Autotote sells time to all customers able to pay. Autotote also passes the second test for common carriers by providing users with raw satellite bandwidth and "...allows customers to transmit intelligence of their own design and choosing." FCC regulatory language does not quantify the amount of telecommunications services a vendor must provide to the public in order to be qualified as a common carrier, simply that "...it holds itself out to provide service generally to the public for a fee." DOE believes Autotote meets these requirements.

In an April 24, 1999 letter to Ms. Dorothy Attwood at the FCC, Mr. Greg Weisiger, at the prompting of FCC Commissioner Powell, provided information concerning companies apparently offering interstate telecommunications services via satellite that had failed to file FCC Form 457. Mr. Weisiger pointed out that approximately seventy five percent of the satellite companies listed in a national trade publication failed to file the Form 457. He suggested the companies, because they had not previously been subject to Universal Service regulation, were simply unaware of its existence. DOE is unaware of any subsequent FCC follow-up or outreach to these types of telecommunications providers. It is therefore DOE's conclusion that many non-traditional telecommunications carriers remain unaware of new Universal Service regulations.

Conclusion

DOE asks that the FCC consider this appeal on its merits and grant funding for program year three. DOE has also requested certain information from the Universal Service Administrative Company concerning a similar year two

appeal (January 11, 2000 letters to Cheryl Parrino and Schools and Libraries Division Board). DOE feels this information is crucial to both the year two application and this appeal. When the requested information is provided, DOE will submit additional supporting documentation for this appeal.

This appeal was initially delivered by DOE to SLD in correspondence dated May 10, 2000. SLD rendered its decision on March 30, 2001 – almost eleven months after DOE's appeal was received by SLD. Fortunately, DOE and the Commonwealth of Virginia have adequate resources to pay full price for services received during this appeal process. Many applicants, particularly those eligible for high percentage discounts are unable to afford the full price of services while appeals are pendent. Therefore, DOE asks that the FCC require SLD to act on appeals within 90 days of receipt. This requirement would comport with appeal timelines imposed upon the FCC and would greatly assist the most disadvantaged E-Rate applicants.

Respectfully submitted this eleventh day of April, 2001,


Lan Neugent
Assistant Superintendent for Technology

Virginia Department of Education
P.O. Box 2120
Richmond, Virginia 23219-2120